LOW GIM SIAH

v.

THE LAW SOCIETY OF SINGAPORE

HIGH COURT, SINGAPORE
GOH PHAI CHENG JC
[ORIGINATING SUMMONS NO. 789 OF 1991]
5 DECEMBER 1991

LEGAL PROFESSION: *Complaint of professional misconduct - Acting for plaintiff and his sister - Sister, solicitor's secretary - Inquiry committee dismissed complaint - Committee refused to give its report and solicitor's explanation to plaintiff - Whether plaintiff entitled to them.*

WORDS AND PHRASES: *"Reasons in writing."*

The plaintiff lodged a complaint with the Law Society against Kirpal Singh an advocate and solicitor alleging that Kirpal was guilty of professional misconduct. Kirpal had acted for the plaintiff and his sister in an application for the Grant of Probate to their father's estate. The plaintiff complained that Kirpal was biased against him and acted in favour of his sister. His sister has been Kirpal's secretary for more than two decades.

The inquiry committee met and inquired into the complaint and reported to the Council of the Law Society (Council) that the complaint does not merit a formal investigation by a Disciplinary Committee. The report of the committee was accepted by the council.

The plaintiff being dissatisfied with the decision requested the Law Society to let him have the reasons of the Council for their determination that a formal investigation is not necessary. He also asked for a copy of the report of the Inquiry Committee. By a letter dated 10 August 1991, the council replied to the plaintiff's solicitor, *inter alia*, reproducing the Inquiry Committee's findings.

The plaintiff, being dissatisfied with the determination of the council applied under s. 96 of the Legal Profession Act for a copy of the report of the Inquiry Committee, together with a copy of the explanation of Kirpal to be forwarded to him.

Held:

[1] The reason to be given to the complainant pursuant to s. 87(3) of the Legal Profession Act must include the report of the Inquiry Committee and explanation of the Law Society. The report of the Inquiry Committee and the written explanations of Kirpal are the documents containing the explanations why a formal investigation by a Disciplinary committee is not necessary. These explanations ought to be given to the complainant so that he can then decide whether he should invoke the right of appeal given to him under s. 96 of the Act. Such construction would promote the general legislative purpose under lying the provisions of s. 87(3) and s. 96 of the Act.

[Plaintiff's application allowed.]

Cases referred to:

Yusuf Jumabhoy v. The Law Society of Singapore [1988] 1 MLJ 491 ***(foll)***
Mayor & St. Mellons RDC v. Newport Corps. [1951] AC 189 ***(ref)***
Notham v. Barnet Council [1978] 1 WLR 220 ***(foll)***
Chan Ah Yoke v. Eastern Realty Co. Ltd. [1983] 2 MLJ 100 ***(foll)***

Legislation referred to:
Legal Profession Act (Cap 161, 1990 Edn.) [Sing], ss. 86(5), 87(3), 93(5), 93(6), 96

Other sources referred to:
Statutory Inerpretation by Donald Gifford
Interpretation of Legislation [1982] Statute Law Review 7, by Lord Rent QC
Statute Law, [1980] Golden Rule, by Mr. Bennion
The Discipline of Law, by Lord Denning

For the plaintiff - N. Sreenivasan
For the defendant - S. Radakrishnan

JUDGMENT

Goh Phai Cheng JC:

On 17 December 1990 the plaintiff lodged a complaint with the Law Society against Mr. Kirpal Singh (Kirpal), an advocate and solicitor, alleging that Kirpal was guilty of professional misconduct in the discharge of his duties as an advocate and solicitor when he acted for the plaintiff and his sister, Low Gim Har, in the application for the grant of probate for the estate of Low Yok Kay (deceased) and for other matters connected therewith. The said Low Yok Kay is the late father of the applicant and his sister who are the co-executors and co-trustees of their father's estate.

The plaintiff's complaint was referred to an Inquiry Committee constituted under s. 85(5) of the Legal Profession Act (Cap. 161, 1990 Edn.,) (the Act) for investigation. Briefly, the crux of his complaint related to the manner in which Kirpal had conducted himself in the conduct of the estate matters of the plaintiff's late father, in particular Kirpal's biased attitude against the plaintiff and in favour of his sister. The plaintiff's sister has been Kirpal's secretary for more than two decades. The Inquiry Committee met and inquired into the complaint and reported to the Council of the Law Society (the council) that the complaint does not merit a formal investigation by a Disciplinary Committee. The report of the Inquiry Committee was accepted by the council.

By a letter dated 5 August 1991, the Executive Director of the Council informed the plaintiff that his complaint was dismissed. The said letter reads:

> **Complaint Against Mr. Kirpal Singh**
>
> I refer to the above matter.
>
> The Inquiry Committee of the Law Society has met and inquired into your complaint and has reported to the Council of the Law Society that your complaint does not merit a formal investigation by a Disciplinary Committee. The council has accepted this report and the complaint is, therefore, dismissed.

By a letter dated 7 August 1991, the plaintiff's solicitors requested the Law Society to let them have the reasons of the council for their determination that a formal investigation is not necessary. They also asked for a copy of the report of the Inquiry Committee.

By a letter dated 10 August 1991, the Executive Director of the council replied to the plaintiff's solicitors as follows:

> **Complaint by Mr. Low Gim Siah against Mr. Kirpal Singh**
>
> We refer to your letter dated the 7th instant.

The reasons why the council determined that a formal investigation was not necessary was because council accepted the findings of the Inquiry Committee as set out below. These findings were arrived at by the Inquiry Committee after considering the written complaint, the written reply by the respondent, Mr. Kirpal Singh, further submissions and explanations, all documentary evidence produced and after hearing your client, the complainant and the respondent.

Inquiry Committee's Findings

...

Conclusions

In the light of the foregoing, the Inquiry Committee was of the view that no formal investigation by a Disciplinary Committee was required and recommended that the complaints against the respondent be dismissed.

I ought to mention that in the above letter the council reproduced the Inquiry Committee's findings in approximately three pages.

On 19 August 1991 the plaintiff, being dissatisfied with determination of the council, applied under s. 96 of the Act for the following orders:

(a) that a copy of the report of the Inquiry Committee, together with a copy of the explanations of the respondent (that is Kirpal), be forwarded to the plaintiff by the defendants; and

(b) that the defendants be directed to apply to the Chief Justice for the appointment of a Disciplinary Committee to hear and investigate the plaintiff's complaint against the respondent.

When this summons was first heard before this Court, a direction was given for the application in respect of the first order mentioned above to be heard first. Therefore in this judgment, I shall only deal with the plaintiff's application for the first order.

The plaintiff's reasons for being dissatisfied with the determination of the council were as follows:

(a) At the hearing of the Inquiry Committee held on 25 May 1991 which the plaintiff attended with his solicitor, the Inquiry Committee sought certain clarifications from him. In the course of the hearing, oral references were made to the written explanation of Kirpal. Although the plaintiff's solicitor requested for a copy of the explanation, the request was turned down by the Inquiry Committee. The plaintiff was therefore unaware of Kirpal's explanation and was unable to give evidence as to the truth or falsity of the explanation.

(b) The Inquiry Committee did not consider Kirpal's actions in totality and instead chose to look at each incident separately and in isolation. Even if the particular incidents do not merit a formal investigation by a Disciplinary Committee, Kirpal's actions taken together and viewed as a series of acts may constitute conduct that merit a formal investigation by a Disciplinary Committee.

(c) The Inquiry Committee appeared to have accepted Kirpal's explanation entirely. The Inquiry Committee did not allow the plaintiff to have sight of Kirpal's explanation or offer the plaintiff an opportunity to rebut Kirpal's assertions except for certain matters raised at the hearing. The Inquiry Committee could not have reached a fair and accurate decision without having done so.

It is the plaintiff's contention that this Court should grant the first order sought him on the following grounds:

(a) The documents applied for are necessary for the determination of the other prayer in this summons. The plaintiff has to decide if he wants to proceed with his application for a Disciplinary Committee to be appointed, particularly as he would have to conduct the proceedings before such a Disciplinary Committee, if it is appointed.

(b) The reasons in writing given by the Council of the Law Society are not full and sufficient and do not deal with the substantial points which are at issue.

(c) The report of the Inquiry Committee and the explanations of Kirpal are not privileged documents which are protected from disclosure.

Since the council accepted the findings of the Inquiry Committee *in toto* and it is the function of this Court to review the council's decision that a formal investigation by the Disciplinary Committee is not necessary, this Court will have to:

(a) examine the complaint made by the plaintiff to the Law Society and the supporting documents;

(b) consider Kirpal's explanation and all other documentary evidence furnished to the Inquiry Committee; and

(c) review the findings of facts and law of the Inquiry Committee, in particular the weight that they gave to the explanations, their consideration of the oral evidence taken and their conclusions, including the reasoning which gave rise to the conclusion,

in order to make a decision as to whether this Court should affirm the determination of the council or direct the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Committee.

The plaintiff's Counsel submitted that in the discharge of its functions under s. 96 of the Act, this Court is in effect exercising its appellate jurisdiction over an administrative tribunal. Invariably, an appellate Court must have before it the notes of the evidence given before the tribunal and the reasons of the tribunal for its decision.

Counsel for the plaintiff also referred this Court to O. 28 r. 4(2) of the Rules of the Supreme Court which provides that the Court "shall give such directions as to the further conduct of proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof". He contended that if this Court were to make an order directing the Law Society to apply to the Chief Justice to appoint a Disciplinary Committee, then the plaintiff would have to conduct the proceedings before the Disciplinary Committee. In that case, the plaintiff must have the report of the Inquiry Committee and the explanations of Kirpal for the purposes of those proceedings.

It was submitted by the plaintiff's Counsel that the reasons in writing which the Law Society has given to the plaintiff pursuant to s. 87(3) of the Act are not full and sufficient and does not deal with the substantial points at issue. He referred this Court to the following *dicta* of S. K. Chan JC (as he then was) in *Yusuf Jumabhoy v. The Law Society of Singapore* [1988] 1 MLJ 491 at p. 494:

> Under s. 88(2) of the Act [now renumbered a ss .87(3) of Cap. 161, 1990 Edn.], the council is under an obligation to give reasons for its decisions. In this context, the expression "reason" means the grounds of explanation for the decision of the council. The reasons should be such as are readily comprehensible to the complainant so that he could decide whether he should invoke the right of appeal and, if there is such an appeal, to enable the Court to review the

decision. The council must give reasons not only to inform but to explain; they must be full and sufficient and deal with the substantial points at issue: see 1 *Halsbury's Laws of England* 4th Edn., para. 16.

It is the Law Society's contention that the Act does not permit the report of the Inquiry Committee and the explanations of Kirpal to be disclosed to the plaintiff. Counsel for the Law Society referred this Court to s. 87(3) of the Act which states that in the event that the council determines that a formal investigation is unnecessary, the council shall on the request of the complainant furnish him with the "**reasons in writing**". He submitted that in the instant case the council has complied with that subsection and the reasons given by the council to the plaintiff's solicitors in the Law Society's letter dated 10 August 1991 (reproduced above) are more elaborate and detailed than the reasons given by the council in the *Yusuf Jumabhoy's* case.

Counsel for the Law Society also submitted that the *Yusuf Jumabhoy's* case did not deal with the question whether a complainant who invokes the right of appeal conferred by s. 96 of the Act is entitled to have a copy of the report of the Inquiry Committee and the explanation of the advocate and solicitor under investigation for the complainant to decide whether he should invoke the right of appeal. That case merely dealt with the adequacy of the reasons given by the council to the complainant.

The Law Society's Counsel also referred this Court to s. 93(5), (6) of the Act in support of his contention that the Act does not permit the disclosure of the report of the inquiry Committee and Kirpal's explanations to the plaintiff. s. 93(5), (6) states:

(5) The findings and determination of the Disciplinary Committee shall be published.

(6) A copy of the entire record of the proceedings of the Disciplinary Committee including its findings and determination shall be made public and copies thereof shall be made available to the members of the public upon payment of the prescribed fee.

It was submitted by Counsel for the Law Society that if Parliament intended that a copy of the report of the Inquiry Committee should be made public as in the case of the report of the Disciplinary Committee, a similar provision should have been enacted in the Act in respect of the report of the Inquiry Committee.

In my view, those subsections do not support the Law Society's contention that the Act prohibits the disclosure of the report of the Inquiry Committee and the explanations of Kirpal to the plaintiff. Those subsections require the findings and determination of the Disciplinary Committee to be published and to make them available to the public. The plaintiff is a party to the proceedings before the Inquiry Committee. He is a complainant and the question which is before us is whether a complainant who is dissatisfied with a determination of the council, as opposed to a member of the public, is entitled to a copy of the report of the Inquiry Committee and a copy of the written explanation furnished by a respondent to the Inquiry Committee.

Counsel for the Law Society also referred this Court to s. 96(2) of the Act which states that an application to a Judge for a review of the council's determination shall be made by originating summons and shall be accompanied by an affidavit of the facts constituting the basis of the application and by a copy of the application or complaint originally made to the Society together with a copy of the council's reasons in writing supplied to the applicant under s. 87(3). He submitted that the words used in that section are "reasons in writing" and not "the report of the Inquiry Committee". In my view s. 96(2) of the Act does not give us any assistance at all. The phrase "reasons in writing" which appear in s. 96(2) is identical

to the phrase used in s. 86(5). We are now involved in an exercise to determine exactly what was the intention of Parliament when it used the term "reasons in writing" in both s. 86(5), 96(2) of the Act.

The Law Society's Counsel quoted extensively from the chapter on the literal or plain meaning rule of the interpretation of statutes in Donald Gifford's book *Statutory Interpretation*. He urged this Court to apply the literal rule in the construction of s. 87(3) of the Act. The following is a brief summary of that rule as expounded in Donald Gifford's work:

(a) The fundamental rule of statutory interpretation is that plain words must give their plain meaning. There is no principle of interpretation that authorises the Court to rewrite an enactment, the wording of which yields a plain meaning.

(b) Statutes are the creation of the elected Parliament. Judges, in the British tradition, are not elected and must therefore be careful to confine themselves to interpreting the statutes as opposed to rewriting them. Parliament's intention is of great importance in statutory interpretation. It is only by considering the meaning of the words used by the legislature that the Court can ascertain its intention.

(c) The words used in a statute should be given their natural and ordinary meaning.

(d) The plain meaning rule of statutory interpretation, which prevents the Court from rewriting an Act so as to eliminate mistakes, equally operates to prevent attempts at rewriting by filling in the gaps. It is for the legislature and not for the Courts to fill any gap that may unintentionally have been left in the statute.

Counsel for the Law Society also submitted that if this Court finds that there is a *lacuna* in the Act, then the Court should leave it to Parliament to amend the Act to make it clear that the complainant is entitled to a copy of the report of the Inquiry Committee.

I ought to mention that the literal rule is only one of the several rules of statutory interpretation. In his book, Donald Gifford devoted one chapter each to the *Literal* Rule, the *Golden* Rule, the *Mischief* Rule and the Purposive Approach. He put all the four chapters in Part One of his work with the heading "The Four General Approaches to Statutory Interpretation". In the preface to his work (page x), the author said:

> The rules of statutory interpretation are guidelines, not straightjackets:
>
> > They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one "rule" points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular "rule": *Maunsell v. Olins* [1975] AC 373 at p. 382.

In recent years, the literal rule has been regarded as completely out-dated. Lord Rent QC in his article *Interpretation of Legislation* [1982] Statute Law Review 7 described statutory interpretation as a "big subject on which the Courts have been evolving principles for 400 years". He then went on to state:

> The first step in the evolution of our rules of interpretation was the statement of the *Mischief* Rule by Coke CJ. in *Heydon's Case 3* Co. Rep. 7a in 1584. This required the Judges 'to make such construction as shall suppress the mischief and advance the remedy.'
>
> Towards the middle of last century statutes became more detailed, and in 1844 came the *Literal* Rule. In the *Sussex Peerage Claim* [1844] 11 Cl. & F 85 at p. 143 Tindal CJ said, 'If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words alone do, in such a case, best declare the intention of the lawgiver.'

Then in 1877 came the **Golden** Rule, which *Mr. Bennion, Statute Law* (1980), pp. 81-82] prefers to call 'the **Absurdity** Rule.' 'Take the whole statute together,' said Lord Wensleydale:

> and construe it altogether giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or an inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other signification, which though less proper, is one which the Court thinks the words will bear.: *River Wear Commissioners v. Adamson* [1877] 2 App. Cas: 743, 764.

There is no priority among these three rules and they are inconsistent with each other. The Judges have for many years used whichever they preferred.

Lord Denning in his book, *The Discipline of Law,* at p. 7 to 17, has described how between 1949 and 1951 he and others in the Court of Appeal tried to establish a new approach, by liberally construing statutes 'so as to give effect to the governing principles embodied in the legislation.' In several cases they succeeded but in 1951 came his famous conflict with Lord Simmonds who described Lord Denning's initiative as a 'naked usurpation of the legislative function.': *Mayor & St. Mellons RDC v. Newport Corps*. [1951] AC 189 at p. 191.

The purposive and more liberal judicial approach reached its climax in 1978 when Lord Denning in *Notham v. Barnet Council* [1978] WLR 220 [at p. 228] said, 'The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the "purposive approach" ... ' In all cases now in the interpretation of statutes we adopt such a construction as will promote 'the general legislative purpose' underlying the provision.

A review of the law relating to the interpretation of statutes was carried out by the Law Commission in 1969: The Interpretation of Statutes: Law Commission Report No. 21, 1969. In para. 80(c) of their report, the Law Commission proposed that Judges should adopt a purposive approach to the construction of statutes, namely that a construction which would promote the general legislative purpose underlying the provision in question is to be preferred to a construction that would not.

The purposive approach has been used by this Court when interpreting legislation. In *Chan Ah Yoke v. Eastern Realty Co. Ltd.* [1983] 2 MLJ100, this Court constituted by Wee Chong Jin CJ, Kulasekaram and Lai Kew Chai JJ, rejected the use of the literal rule on the ground that it will lead to an absurdity when it was asked to construe para. 2(a) of the Control of Rent (Exemption) Notification, 1980. The Court was hearing an appeal from the District Court. In *The Ear* [1985] 2 MLJ 3 Kulasekaram J adopted the purposive approach in the construction of the Carriage of Goods by Sea Act (Cap. 33 1985 Edn.,)

The question which I have to ask myself is what was the intention of Parliament in enacting s. 87(3) of the Act when it required the council to give its reasons in writing to a complainant for its determination that an investigation by a Disciplinary Committee is not necessary. To my mind, there is no doubt whatsoever that the legislative purpose of that subsection when read together with s. 96 of the Act is to require the council to give its explanations to the complainant to enable him to decide whether he should invoke the right of appeal and, if there is such an appeal, to enable the Court to review the decision. In the instant case, the council has accepted the report of the Inquiry Committee that the complaint of the plaintiff does not merit a formal investigation. Later on, the council informed the plaintiff that the Inquiry Committee made certain findings after considering the written complaint, the written reply by the respondent, Kirpal Singh, further submissions and explanations, all documentary evidence produced before the Inquiry Committee. The reasons to be given to the complainant

pursuant to s. 87(3) must in my view include the report of the Inquiry Committee and the explanation of the respondent. The report of the Inquiry Committee and the written explanation of Kirpal are the documents containing the explanations why a formal investigation by a Disciplinary Committee is not necessary. These explanations ought to be given to the complainant so that he can then decide whether he should invoke the right of appeal given to him under s. 96 of the Act. Such an construction would in my view promote the general legislative purpose underlying the provisions of s. 87(3) and 96 of the Act. I reject the use of the literal rule which Counsel for the Law Society has urged me to adopt.

In *Notham v. Barnet Council* [1978] 1 WLR 220 at p. 228, Lord Denning said:

> ... It is no longer necessary for Judges to wring their hand and say: 'There is nothing we can do about it.' Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the Judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done, had they had the situation in mind.

In a case where the council has accepted the report of the Inquiry Committee, this Court in exercising its powers of review under s. 96 of the Act will in effect be reviewing the decision of the Inquiry Committee. Such a review cannot be carried out effectively unless the Court has before it a copy of the report of the Inquiry Committee, the written explanation of the respondent and all other documentary evidence produced before the Inquiry Committee.

Accordingly, for the reasons given above, I grant the declaration sought by the plaintiff. The costs of this application will be reserved to the Judge who will be dealing with the other declarations sought by the plaintiff.

Also found at [1992] 1 CLJ 587